

Message Text

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ORIGIN ARA-08

INFO OCT-01 SS-14 ISO-00 L-01 OES-02 NSC-05 NSCE-00 SSO-00

INR-05 INRE-00 IO-03 OFA-01 EB-03 PM-03 DODE-00

CIAE-00 /046 R

DRAFTED BY ARA:BR:AFWATSON:LK

APPROVED BY ARA:HARYAN

ARA:BR:RWZIMMERMANN

L/ARA:DGANTZ

L/OES:SBURTON - PM:GSWEANEY

OES/OFA:BHALLMAN

D/LOS:OEESKIN

ARA/PLC:AHWOODRUFF

COMMERCE:NMFS:(INFO)

OSD/ISA:(TNFO)

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

USMISSION GENEVA IMMEDIATE

C O N F I D E N T I A L STATE 079224

LIMDIS

E.O. 11652:GDS

TAGS:EFIS, BR, PLOS, PFOR

SUBJECT:LEGAL CONSEQUENCES OF SHRIMP VESSEL SEIZURE

REF: (A) STATE 71502; (B) BRASILIA 2361; (C) BRASILIA 2545

GENEVA PASS TO CLINGAN

1. AS NOTED REFTTEL A, THE SEIZURE BY THE BRAZILIAN NAVY
OF THE SHRIMP VESSELS YOUNG'S AND TINA MARIE MAY BRING INTO
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PLAY SEVERALLEGISLATIVE PROVISIONS THAT COULD AFFECT US

RELATIONS WITH BRAZIL. OF MOST IMMEDIATE IMPORTANCE IS SECTION 3(B) OF THE FOREIGN MILITARY SALES ACT, WHICH IS AUTOMATICALLY TRIGGERED WHENEVER A COUNTRY WHICH IS A RECIPIENT OF FOREIGN MILITARY SALES, CREDIT OR GUARANTEES SEIZES AN AMERICAN VESSEL FISHING MORE THAN 12 MILES FROM THE COAST OF THAT COUNTRY. THE DEPUTY SECRETARY HAS ALREADY AUTHORIZED THE DEPARTMENT TO REQUEST A PRESIDENTIAL WAIVER OF THIS PROVISION AND PREPARATION OF THE NECESSARY DOCUMENTATION HAS BEGUN. PENDING SIGNING OF THE WAIVER, EFFORTS ARE BEING MADE TO THE EXTENT CONSISTENT WITH THE LAW TO AVOID DISRUPTION OF FMS PROGRAMS -- INCLUDING THE SALE OF DESTROYERS AND A VISIT BY BRAZILIAN CIVIL ENGINEERS TO A SOIL TESTING SEMINAR IN THE US LATER THIS MONTH.

2. STATUTES WHICH MAY BE TRIGGERED BY THE SEIZURE OF THE VESSELS INCLUDE THE FISHERMAN'S PROTECTIVE ACT AND SECTION 620(0) OF THE FOREIGN ASSISTANCE ACT. SEVERAL OTHER PROVISIONS MAY BE TRIGGERED NOT BY THE SEIZURES PER SE BUT RATHER BY THE CONFISCATION OF THE CATCHES, BECAUSE CONFISCATION MAY CONSTITUTE A TAKING OF THE PROPERTY OF US CITIZENS (HICKENLOOPER AMENDMENT, GONZALES AMENDMENT, AND SECTION 502(B)(4) OF THE TRADE ACT). IN THIS RESPECT, DOES EMBASSY HAVE ANY FURTHER INFORMATION ON REASONS FOR CONFISCATION OF CATCH, E.G., THAT WOULD SUBSTANTIATE RUMOR THAT SHRIMP WERE BEING SOLD ILLEGALLY FROM SHIPBOARD IN BELEM?

3. IN PARAGRAPHS 2C AND 8 OF REFTEL B EMBASSY INQUIRED ABOUT PAST FREQUENCY OF US BOATS SHRIMPING IN BRAZILIAN-CLAIMED WATERS OUTSIDE AGREEMENT AREA. RELIABLE INFORMATION ON THIS QUESTION IS UNAVAILABLE. THE NATIONAL MARINE FISHERIES SERVICE REPORTS THAT THERE MAY HAVE BEEN SOME OCCASIONAL FISHING OUTSIDE THE AREA IN THE PAST, BUT SUCH FISHING DOES NOT SEEM TO HAVE BEEN FOR EXTENSIVE PERIODS OR BY LARGE NUMBERS OF BOATS.

4. THE DEPARTMENT CONCURS WITH VIEW EXPRESSED PARAGRAPH 6 REFTEL B TO EFFECT THAT IN ORDER TO PROTECT OUR LOS POSITION WE MUST CONVEY TO THE GOB OUR INTERPRETATION OF APPLICABILITY OF THE SHRIMP AGREEMENT AND INTERNATIONAL CONFIDENTIAL

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LAW. WE ALSO AGREE THAT THE ADVERSE IMPACT OF OUR PROTEST ON BILATERAL RELATIONS CAN BE LESSENERED BY MAKING IT CLEAR TO THE GOB THAT OUR PURPOSE IS TO PROTECT OUR LOS POSITION (NOT TO AFFECT OPERATIONS UNDER THE AGREEMENT), AND THAT WE WANT TO AVOID TO THE EXTENT POSSIBLE THE PUNITIVE MEASURES PRESCRIBED BY US STATUTES.

5. A US NAVY REPRESENTATIVE HAS DISCUSSED THIS MATTER

WITH THE BRAZILIAN NAVAL ATTACHE IN WASHINGTON AND THE BRAZILIAN EMBASSY HERE IS AWARE THAT A JURIDICAL CONFRONTATION EXISTS BECAUSE SEIZURES OCCURRED OUTSIDE AGREEMENT AREA. HOWEVER, THE BRAZILIAN EMBASSY HAS TAKEN NO INITIATIVE ON THE MATTER AND WE BELIEVE IT WOULD BE BEST FOR AMEMBASSY BRASILIA TO CONTINUE TO HANDLE THE DIPLOMATIC CORRESPONDENCE. IN THIS REGARD, THE DEPARTMENT PROPOSES FOR YOUR CONSIDERATION THE FOLLOWING NOTE FOR DELIVERY TO THE GOB IN RESPONSE TO ITS NOTE REPORTED REF-TEL C:

6. BEGIN TEXT OF NOTE: EXCELLENCY: I HAVE THE HONOR TO REFER TO THE FOREIGN MINISTRY'S NOTE OF APRIL 3 AND TO COMMUNICATIONS RECENTLY RECEIVED BY THE UNITED STATES CONSUL IN BELEM FROM THE BRAZILIAN NAVY AND SUDEPE REGARDING

THE ARREST AND SEIZURE OF TWO UNITED STATES SHRIMP FISHING VESSELS. I UNDERSTAND THAT THESE VESSELS, THE "YOUNG'S" AND THE "TINA MARIE", REPORTEDLY WERE FISHING FOR SHRIMP WITHIN 200 MILES OF THE BRAZILIAN COAST AND OUTSIDE THE AREA OF AGREEMENT DEFINED IN ARTICLE I OF THE AGREEMENT CONCERNING SHRIMP BETWEEN OUR TWO GOVERNMENTS SIGNED MARCH 14. I FURTHER UNDERSTAND THAT YOUR GOVERNMENT CONSIDERS THAT THESE VESSELS HAVE VIOLATED THE AGREEMENT BY FISHING IN AN AREA NOT PERMITTED UNDER THE TERMS OF THE AGREEMENT. IN THIS CONNECTION, SUDEPE HAS INFORMED THE U.S. CONSUL THAT CERTAIN QUANTITIES OF SHRIMP AND SMALL FISH WERE CONFISCATED IN CONFORMITY WITH ARTICLE V, PARAGRAPH 5 OF THE AGREEMENT.

7. IT IS WELL-KNOWN THAT THE U.S. DOES NOT CONSIDER ITSELF OBLIGATED UNDER INTERNATIONAL LAW TO RECOGNIZE TERRITORIAL SEAS CLAIMS OF MORE THAN THREE NAUTICAL MILES
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NOR FISHERIES JURISDICTION OF MORE THAN 12 NAUTICAL MILES FROM THE COAST. THE BRAZILIAN NAVY REPORTED THAT THESE TWO VESSELS WERE SIGHTED SOME 22 NAUTICAL MILES FROM THE COAST AND SEIZED SOME 18 MILES FROM THE COAST. IT IS, THEREFORE, MY GOVERNMENT'S POSITION THAT THESE VESSELS WERE SEIZED WHILE ON THE HIGH SEAS WHERE ALL NATIONS ENJOY FREEDOM OF FISHING IN ACCORDANCE WITH INTERNATIONAL LAW.

8. MOREOVER, IT IS MY GOVERNMENT'S POSITION THAT THE AGREEMENT CONCERNING SHRIMP BETWEEN OUR TWO GOVERNMENTS HAS NO APPLICATION TO THE AREA IN WHICH THESE VESSELS WERE OPERATING AND THAT NO VIOLATION OF THE AGREEMENT IS THEREFORE INVOLVED IN THIS MATTER. ARTICLE I OF THE AGREEMENT, WHICH HAS NOT YET ENTERED INTO FORCE IN ACCORDANCE WITH

ARTICLE XI, PROVIDES AS FOLLOWS:

(QUOTE ARTICLE I)

THE BRAZILIAN NAVY REPORTED THE LOCATION OF THE TWO VESSELS AS MORE THAN 300 MILES OUTSIDE THE AREA OF AGREEMENT DEFINED IN THIS ARTICLE, WHICH IS THE ONLY AREA TO WHICH THE AGREEMENT HAS ANY RELEVANCE AS PROVIDED THEREIN. THE U.S. GOVERNMENT DOES NOT CONSIDER THAT THE AGREEMENT IN ANY WAY AFFECTS THE RIGHT OF UNITED STATES VESSELS TO FISH IN ANY OTHER AREA OF THE HIGH SEAS. IT BELIEVES THAT TO CONSTRUE THE AGREEMENT OTHERWISE WOULD BE INCOMPATIBLE WITH ARTICLE IX OF THE AGREEMENT AS WELL AS ITS OBJECT AND PURPOSE AS EXPRESSED IN THE PREAMBLE.

MY GOVERNMENT REAFFIRMS ITS INTENTION TO MAKE EVERY EFFORT

TO ENCOURAGE THE VOLUNTARY COMPLIANCE BY ITS INDUSTRY WITH THE PROVISIONS OF THE AGREEMENT PENDING ITS ENTRY INTO FORCE AS PROVIDED IN ARTICLE XI.

(COMPLIMENTARY CLOSE) END TEXT.

9. AT TIME OF DELIVERY OF NOTE EMBASSY SHOULD ADVISE GOB ORALLY IN LOW KEY FASHION OF EXISTENCE OF LEGISLATIVE PROVISIONS DESCRIBED IN PARAGRAPHS 1 AND 2 ABOVE AND CONFIDENTIAL

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POINT OUT THAT WE ARE TRYING TO AVOID APPLICATION OF PUNITIVE MEASURES TO THE EXTENT POSSIBLE. WE WOULD LIKE TO LEAVE IMPRESSION THAT THE ACTION OF GOB DOES CAUSE US SERIOUS PROBLEMS BOTH FOR LOS POLICY REASONS AND BECAUSE OF OUR LAWS, BUT THAT WE ARE, NEVERTHELESS, TRYING TO PREVENT THE MATTER FROM BECOMING AN ISSUE IN OUR RELATIONS. KISSINGER

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, LAW OF THE SEA, DIPLOMATIC NOTES, FISHING AGREEMENTS, FISHING DISPUTES
Control Number: n/a
Copy: SINGLE
Draft Date: 08 APR 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE079224
Document Source: CORE
Document Unique ID: 00
Drafter: BR:AFWATSON:LK
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D750122-0069
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750470/aaaacmlu.tel
Line Count: 208
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: LIMDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: LIMDIS
Reference: 75 STATE 71502, 75 BRASILIA 2361, 75 BRASILIA 2545
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 23 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 JUN 2003 by BoyleJA>; APPROVED <30 OCT 2003 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EGAL CONSEQUENCES OF SHRIMP VESSEL SEIZURE
TAGS: EFIS, PLOS, PFOR, BR, US
To: BRASILIA GENEVA
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006